



THE CITY OF SAN DIEGO

DATE: November 5, 2010

TO: William Anderson, Director
City Planning and Community Investment Department

FROM: Eduardo Luna, City Auditor

SUBJECT: **Hotline Investigation of Contract Administration with the Greater Golden Hill Community Development Corporation**

The Office of the City Auditor conducted an investigation of the Greater Golden Hill Community Development Corporation (GGHCDC) and the City's Office of Small Business (OSB) in response to a complaint made to the City's Fraud Hotline. The complaint alleged a lack of fiscal control in the administration of contracts between the OSB and the GGHCDC. Our investigation concluded that the allegations are substantiated in part. We found that the OSB did not document the required on-site monitoring visits, and it appears that the GGHCDC did not properly solicit enough bids before a contract that was awarded.

Background

The GGHMAD was formed in 2007 and a contract between the City and GGHCDC was established in FY 2008. As contractor for the Greater Golden Hill Maintenance Assessment District (GGHMAD), the GGHCDC provides services that include but are not limited to: debris and litter control, tree maintenance and replacement, landscape services, graffiti control, sidewalk safety hazards, sidewalk sweeping and power-washing, lighting services, large bulk item pickup and removal of illegal dumping, enhanced trash receptacles and recycling, decoration and banner installations, and trail beautification. The GGHCDC Fiscal Year runs from September 1st through August 31st.

We noted that a CPA firm provided an audit report dated 11/23/2009 to GGHCDC that stated in their opinion the financial statements "present fairly, in all material aspects, the financial position of Greater Golden Hill Community Development Corporation as of 8/31/2009." Note 7 to the financial statements states, "The CDC is in compliance with the terms of the agreement for the contract year ended 6/30/2009."



INVESTIGATION PROCEDURES

The following interviews were conducted and documents were reviewed during the investigation:

1. FY 2009 (RR-303907-5) and FY 2010 (RR-305178-5) funding source agreements between the City and the GGHCDC for services provided by GGHCDC. In addition to the contracts for FY 2009 and 2010, the GGHCDC had one small agreement (less than \$25k) in FY 2009 for Community Parking Districts (RR-303939) for parking related activities.
2. Monthly reimbursement requests for each funding source agreement for FYs 2009 and 2010 through 12/31/2009 submitted to the City's Office of Small Business (OSB) by GGHCDC.
3. Audited financial statements for GGHCDC for FY 2009 as required by agreement with the City. The audit was dated 11/23/2009 for the fiscal year ending 8/31/2009.
4. Interviews and discussions with Community Development Specialists and GGHCDC staff.

INVESTIGATION RESULTS

Office of Small Business (OSB) Monitoring of GGHCDC Expenditures

We found that the City's OSB is monitoring the expenditures requested for reimbursement from GGHCDC. We reviewed the monthly reimbursement invoices submitted by GGHCDC to the City's OSB for the period July 2008 through December 2009 and the account information, budget category, check number, description, and amount were listed on each invoice. Expenses totaling \$1,638.43 were disallowed by OSB staff in the GGHCDC reimbursement request for the Community Parking District for the period 9/3/08 through 4/3/09. The FY 2010 reimbursement requests submitted by GGHCDC had approval stamps that were signed by City staff. Our review of expenditures found only one exception with the threshold to require GGHCDC to get two additional bids in writing.

Non-Compliance with Competitive Bidding Requirements

It appears that the GGHCDC did not properly solicit enough bids before a contract was awarded. The Conflict of Interest and Procurement Policy for Nonprofit Corporations Contracting with the City of San Diego requires GGHCDC to obtain three written price proposals for expenditures between \$5,000 and \$25,000. Our review of the invoices attached to the request for reimbursements identified the following payments to a vendor that exceeded \$5,000 without GGHCDC obtaining three written or verbal price proposals from vendors:

Date	Invoice #	Amount	Description
6/5/2009	I3443	\$4,741.00	Logo master for Clean, Green & Safe, et al
6/2/2009	I3444	\$1,077.00	Printing of graphic collateral items
11/11/2009	I3482	\$1,524.67	Printing of graphic collateral items

The expenditures to this vendor were for creating a logo and providing other services. A GGHCDC staff member stated that the initial cost of the branding strategy was a \$4,741 contract with this vendor to produce the logo along with 10 additional items to include website banner, magnets, door hangers, postcards, etc. The GGHCDC staff member stated that since the contract was under \$5,000 competitive bids were not sought, but rather went to this vendor who the staff member had met through prior employment. It was believed that the vendor could provide quality work at a fair price. The staff member stated that the accounting classification of "Other Services" was utilized to fund this contract, and since the board approved this budget, discretion could be used to spend Other Services funds on the logo.

The CGGHCDC staff member did not recall that the contracts evidenced by invoices I3443 and I3444 above were made at the same time. It was stated that the printing contract was arranged after the initial design contract and its actual date should have been 7/2/2009. The staff member recalled having a conversation with a staff member of the OSB and in the conversation it was determined that the invoices represented expenditures in two fiscal years. However, even though the payments may not have exceeded \$5,000 during a single fiscal year and were for various services, the expenditures did exceed \$5,000 from a single contractor in a 12 month period. This appears to be not in compliance with the Conflict of Interest and Procurement Policy requirement to obtain three written price proposals for expenditures between \$5,000 and \$25,000 from a single contractor in a 12 month period. The OSB indicated that changes were made to the MAD agreements regarding the definition of a 12 month period in Fiscal Year 2011, but the transactions we reviewed were for Fiscal Years 2009 and 2010.

Improvements Needed in OSB Monitoring

We found the allegation that the OSB is not adequately monitoring the GGHCDC was substantiated in part. We found the OSB is not documenting its required on-site inspections. Article II §B.1 of the annual Maintenance Agreement between the City and GGHCDC states that: *"The City shall conduct at least four on-site inspections of the District during the period of this Agreement. In the event the City determines from such inspections that the District is not being properly administered by the GGHCDC, a report of such findings will be presented first to the GGHCDC, and if not satisfactorily corrected within thirty calendar days will then be presented to City Council. City Council may use such findings as the basis for the termination of this Agreement pursuant to Article VI hereof and the San Diego Municipal Code Section 65.0212"*.

We requested the documentation for the required on-site inspections of GGHCDC made by the OSB during Fiscal Years 2009 and 2010, and no documentation or reports were provided. The OSB responded by stating that MAD staff did not find deficiencies with respect to any referenced standard in Article I, Section B, and therefore no City inspection report was supplied to GGHCDC. We should note that the OSB was unable to provide any documentation showing that inspections were conducted confirming that no reportable conditions were found. A GGHCDC staff member recalled that OSB has made onsite visitations. However, the OSB should prepare and maintain documentation of inspection activities performed as proof that the required visits are being performed timely and sufficiently, and the outcome should be documented.

Recommendations

1. We recommend that the Office of Small Business (OSB) establish policies and procedures to require written documentation of all on-site inspections required by maintenance agreements with the City and non-profit corporations retained to provide services. The report or checklist should include but not be limited to date and time of visit, list of participants, records reviewed, specific topics of discussion, observations made by the OSB staff member, and list of any follow-up actions as a result of the visit.
2. We recommend that the Office of Small Business establish policies and procedures to verify that procurement policy guidelines are being followed by recipients when payments to an individual vendor exceed any threshold amounts that require the contracting agency to seek multiple bids prior to award. This may include periodically reviewing recipient's procedures used to ensure compliance with the procurement policy guidelines during on-site visits.
3. We recommend that the Office of Small Business determine what actions should be taken regarding the Greater Golden Hill Community Development Corporation (GGHCDC) not following the City's contract (or procurement guidelines) in its transactions with a vendor by not receiving three price proposals for expenditures between \$5,000 and \$25,000.

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William Anderson, Director City Planning and Community Investment Department
November 5, 2010

We appreciate the cooperation we received from the City Planning and Community Investment Department's Office of Small Business and the Greater Golden Hill Community Development Corporation staff. Attached is the written response you provided on November 3, 2010. Thank you for taking action on this issue. Please contact me with any questions.



Eduardo Luna
City Auditor

cc: Honorable Mayor Jerry Sanders
Honorable City Council Members
Honorable Audit Committee Members
Jay M. Goldstone, Chief Operating Officer
Wally Hill, Assistant Chief Operating Officer
Mary Lewis, Chief Financial Officer
Jan Goldsmith, City Attorney
Andrea Tevlin, Independent Budget Analyst



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: October 27, 2010

TO: Eduardo Luna, City Auditor

FROM: William Anderson, Director, City Planning and Community Investment Department

SUBJECT: **Response to Auditor's Hotline Investigation of Contract Administration with the Greater Golden Hill Community Development Corporation**

I have reviewed the report by The Office of City Auditor dated October 27, 2010, which conducted an investigation in response to a complaint made to the City's Hotline regarding the Greater Golden Hill Community Development Corporation. The following are the Auditor's investigation results and recommendations followed by my response.

INVESTIGATION RESULTS

Result #1: Office of Small Business (OSB) Monitoring of GGHCDC Expenditures

Department Response: OSB thoroughly reviews the reimbursement requests submitted by GGHCDC and ensures that the expenditures are all eligible per the conditions outlined in the documents such as the Maintenance Assessment District annual agreement, City's MAD Ordinance, Assessment Engineer's Report and applicable California state laws.

Result #2: Non-Compliance with Competitive Bidding Requirements

Department Response: We believe the Auditor's finding resulted in part from unintentionally conflicting provisions in the FY2009 and FY2010 MAD Agreements relating to procurement of goods and services. The appropriate controlling policy is that contained within the MAD Ordinance/San Diego Municipal Code Division 2, Article 5, Chapter VI (amended 06-08-1998) which specifies MAD Competitive Bidding Requirements for contracts awarded by Non-profit Corporations and applies to the actions within the fiscal year rather than any 12-month period. OSB staff had already identified these conflicting provisions in the MAD agreements prior to the start of the Auditor's Hotline Investigation and had worked with the advisory Deputy City Attorney to correct this for the FY2011 MAD Agreements. Prior to the conclusion of its report, the Auditor's Office was made aware of the conflicting procurement policy and the subsequent

changes to the FY 2011 MAD agreements. The updated agreements were eventually approved by City Council on July 20, 2010 under Resolution Number R-306025.

The MAD Ordinance/San Diego Municipal Code Division 2, Article 5, Chapter VI (amended 06-08-1998) which is the true governing policy/law for all MAD Competitive Bidding Requirements for contracts awarded by Non-profit Corporations, states the following:

§65.0202 Definitions

“*Fiscal Year*” means a twelve-month period commencing on July 1 and ending on the following June 30.

§65.0214 Contracts Awarded by Non-Profit Corporations

The following Contracts for Goods or Contracts for Services are not required to be competitively bid by a Non-profit Corporation:

(A) a Contract for Goods or Contract for Services that provides for an expenditure of less than five thousand dollars (\$5,000);

(B) a Contract for Goods or Contract for Services that is available from a Sole Source only.

The Auditor’s determination of non-compliance with the competitive bidding requirements was in reference to one particular vendor. The Auditor cited three invoices and it appears it utilized the conflicting procurement policy interpretation of any “twelve month period” to determine that GGHCDC did not comply with the bidding requirements.

Based on sections *§65.0202* and *§65.0214* of the MAD Ordinance, OSB staff determined the following:

Invoice # I3443 in amount of \$4,741.00 and dated 6/5/2009 was for logo graphic design. We determined the vendor met the \$5,000 or less no bid requirement for FY 2009 ending June 30, 2009.

Invoice #I3444 in the amount of \$1,077.00 and dated 6/2/2009 was for printing of graphic collateral items. Based on follow up conversation with staff from GGHCDC, it was determined that the invoice was dated incorrectly by the vendor. It was acknowledged that the correct invoice date should have been 7/2/2009 and not 6/2/2009. It should also be noted that it was not possible for the printing of the graphic collateral items to occur prior to the design of the logo, which was included in the collateral items.

The final invoice #I3482 in the amount of \$1,524.67 and dated 11/11/2009 was for the final printing of the graphic collateral items. OSB staff determined both invoices #I3444 and #I3482, which totaled \$2,601.67, met the \$5,000 or less no bid requirement for FY 2010 (July 1, 2009 through June 30, 2010).

Result #3: Improvements Needed in OSB Monitoring

Department Response: OSB staff conducted a minimum of four site visits during each period of the FY 2009 and 2010 MAD agreements. The Auditor obtained correspondence from both OSB staff and GGHCDC staff that stated the site inspections were performed. In addition, OSB staff offered copies of their Outlook calendars to show the dates of when the site visits occurred, however that did not seem to be acceptable.

As listed in the Auditor's report, the annual agreement specifically states, "*in the event the City determines from such inspections that the District is not being properly administered by the GGHCDC, a report of such findings will be presented first to the GGHCDC*". Auditors duly noted that OSB staff did not find deficiencies with respect to any referenced standard in Article I, Section B, and therefore no City inspection report was supplied to GGHCDC. The MAD agreement does not indicate that a report of findings or documentation be presented to GGHCDC in the event the District is being properly maintained. However, to facilitate any future audits, staff will heed the suggestion of the Auditor "*that the OSB should prepare and maintain documentation of inspection activities performed as proof that the required visits are being performed timely and sufficiently*". Under the guidance and requirements listed in the agreements, OSB staff adequately monitored the GGHCDC.

RECOMMENDATIONS

Recommendation #1. We recommend that the Office of Small Business (OSB) establish policies and procedures to require written documentation of all on-site inspections required by maintenance agreements with the City and non-profit corporations retained to provide services. The report or checklist should include but not be limited to date and time of visit, list of participants, records reviewed, specific topics of discussion, observations made by the OSB staff member, and list of any follow-up actions as a result of the visit.

Department Response OSB staff will establish a checklist to be used for site visits to further document the visit and these completed check lists will be maintained in the files of the Non-profit Corporations. Staff will also discuss with the Advisory Deputy City Attorney whether language concerning such a procedure needs to be incorporated into the agreement language for FY 2012.

Recommendation #2. We recommend that Office of Small Business establish policies and procedures to verify that procurement policy guidelines are being followed by recipients when payments to an individual vendor exceeds any threshold amounts that require the contracting agency to seek multiple bids prior to award. This may include periodically reviewing recipient's procedures used to ensure compliance with the procurement policy guidelines during on-site visits.

Department Response: The intent of the MAD Ordinance provision pertaining to procurement practices was to place the onus and burden on the organizations to undertake the appropriate process, to document their compliance with the procedures, and to keep the documentation on

file. The MAD Ordinance section §65.0214 makes clear that the Non-profit is in complete control of the bidding process on all stages.

- Contract for goods and services are administered by the Non-profit Corporation
- Contract for goods and services are awarded by the Non-profit Corporation
- The Non-profit Corporation considers the factors in evaluating a bid or proposal
- In order to protest the award, the relevant community planning group or designated representatives of the District or the Zone must submit to the Non-profit Corporation a written protest
- In order for other property owners within the District or the Zone to protest the award, the property owners must submit to the Non-profit Corporation a written protest
- In the event the Non-profit Corporation receives a valid written protest, the Non-profit shall conduct a noticed meeting with property owners in the District or the Zone to review any protests and hear any public testimony

Given the constraints on our staff time, it was never intended that we would directly monitor the sub-consultant agreements to ensure the bidding compliance were met. Although staff does review the monthly expenditures and reviews the amounts paid to vendors, staff ultimately relies on the Non-profit Corporation and the independent year-end audit statement to show proof of compliance. It may be appropriate for the audit provision in the MAD agreement to be amended to require the independent auditor to also test for compliance with procurement requirements. Typically, such language would be provided by the City Auditor.

Recommendation #3. We recommend that the Office of Small Business determine what actions should be taken regarding the Greater Golden Hill Community Development Corporation (GGHCDC) not following the City's contract (or procurement guidelines) in its transactions with a vendor by not receiving three price proposals for expenditures between \$5,000 and \$25,000.

Department Response: Since OSB staff believes that the GGHCDC complied with the Competitive Bidding Requirements for contracts awarded by Non-profit Corporations listed in the MAD Ordinance/San Diego Municipal Code Division 2, Article 5, Chapter VI (amended 06-08-1998) no additional actions are required, however, general adherence to the procurement requirements could be tested as part of the annual independent audit.

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Eduardo Luna, City Auditor

October 27, 2010

We appreciate working the Auditor's Office and the opportunity to submit our response.

A handwritten signature in black ink, appearing to read 'William Anderson', written over a horizontal line.

William Anderson

Director